

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 253 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAYMON GLUES & CHEMICALS

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR RK PATEL with MR BD KARIA for Petitioner
MR BB NAIK for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, at the instance of the

assessee, the following questions are referred to us for Assessment Year 1980-81 :-

"1. Whether, on the facts and circumstances of the case, the Tribunal was justified in law in confirming the levy of interest u/s. 139(8) of the Act ?"

3. Whether, the Tribunal was further justified in holding that the CIT(A) was justified in concluding that no appeal was tenable against the order for charging interest u/s.139(8) of the Act?"

2. At the hearing of this reference, the learned counsel for the assessee has submitted that the assessee had paid advance tax of Rs.8,64,480/- as mentioned in the last paragraph of the assessment order dated 24.3.1983 (Annexure "A" to the paper book) and that the tax liability of the assessee was assessed in the order dated 24.3.1983 at Rs.7,86,458/-. Since the amount of advance tax paid was more than the tax assessed by the Assessing Officer, the learned Counsel urged that there is no justification for charging any interest. Strong reliance has been placed in this behalf on the decision of the Apex Court in Ganesh Dass Shreeram vs. ITO, Shillong, (1988) 169 ITR 221 wherein the Apex Court observed as under :-

"Before we part with these appeals, we think we should clarify one situation, namely, where the advance tax duly paid covers the entire amount of tax assessed, there is no question of charging the registered firm with interest even though the return is filed by it beyond the time allowed, regard being had to the fact that payment of interest is only compensatory in nature. As the entire amount of tax is paid by way of advance tax, the question of payment of any compensation does not arise. When the amount of tax due had already been paid in the shape of advance tax, the question of payment of compensation by way of interest does not arise and the Income-tax Officer was not, therefore, justified in charging interest."

3. It appears that the Tribunal had negatived the challenge made by the assessee on the basis of the decision of the Gauhati High Court in Ganesh Das Shriram

vs. ITO, (1974) 93 ITR 19. The said decision of the Gauhati High Court was challenged before the Supreme Court. In view of the pronouncement of the Apex Court reversing the decision of the Gauhati High Court and in view of the facts pointed out hereinabove, which are not disputed, we answer question No. 1 in the affirmative i.e in favour of the assessee and against the revenue.

4. As far as the next question is concerned, that pertains to tenability of appeal against the order of charging interest under Section 139(A) of the Act. On this question, the learned counsel for the assessee has relied on the decision of the Apex Court in Central Provinces Manganese Ore Co. Ltd. vs CIT, (1986)160 ITR 961 wherein the following observations are made :-

"In as much as the levy of interest is a part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy at all."

The Apex Court specifically observed that where interest is levied under Section 139 of the Act, the assessee may deny his liability to pay such interest on the ground that the return was not belated or that the penal provision was not attracted at all to his case. Therefore, he denies his liability to be assessed to interest and the appeal is maintainable and, therefore, the appeal would lie.

5. Mr BB Naik, learned counsel for the revenue has vehemently urged that no appeal lies against the order levying interest and that if at all the assessee has any contention to urge, it is open to him to approach the Assessing Officer.

6. Without intending to lay down any law on this particular issue, in view of the peculiar facts of this case that the amount of advance tax paid by the assessee was more than the amount of tax assessed, and in view of our finding that there is no question of charging the assessee with interest even though the return was filed beyond the time allowed (as observed by the Apex Court in Ganesh Dass Shreeram (Supra)), we hold that the appeal was maintainable against the order charging interest.

7. We keep the controversy about tenability of the appeal against order charging interest under section 139(8) of the Act open as the observations are confined to the fact situation that admittedly the advance tax

paid in the instant case is higher than the amount of tax assessed.

8. Subject to the above observations, we answer question No. 2 in the negative i.e. in favour of the assessee and against the revenue.

The reference is accordingly disposed of. There shall be no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-